

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF REVENUE

In the Matter of the Revocation  
Of the Sales Tax Permit of:  
Sherry Lee Erickson  
HC 10 Box 11R  
Detroit Lakes, MN 56501-8801

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

The above-captioned matter came on for a telephone hearing before Administrative Law Judge George A. Beck commencing at approximately 2:00 p.m. on July 15, 1999.

Wayne L. Sather, Attorney, Minnesota Department of Revenue, Legal Services Division, Mail Station 2220, St. Paul, Minnesota 55146-2220, appeared on behalf of the Minnesota Department of Revenue (Department). The Respondent represented herself. The record closed on the date of the hearing.

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Revenue will make a final decision after a review of the record which may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations in this report. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and to present argument to the Commissioner. Parties should contact Mathew G. Smith, Commissioner, Minnesota Department of Revenue, 10 River Park Plaza, St. Paul, Minnesota 55146, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issues in this case is whether or not the Respondent has failed to pay sales taxes owed to the Department as required by law, thereby authorizing the revocation of the Respondent's sales tax permit.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent operates a restaurant, grocery store and gas station. By law she is required to collect and remit sales tax to the State of Minnesota.
2. The Respondent presently holds sales tax permit #2261047.

3. As of the date of the hearing, the Respondent owed past due sales tax in the amount of \$4,546.47, plus a penalty of \$2,097.45 plus interest in the amount of \$367.99 or a total due and owing of \$7,011.91. (Ex. 3) The unpaid tax relates to collection periods extending from October of 1997 thorough March of 1999. (Ex. 1.)

4. The Respondent attributes the failure to pay sales tax to expenses for replacing an underground gas tank.

5. The Respondent defaulted on a prior payment agreement and has presented NSF checks to the department.

6. The Respondent suggested at the hearing that she could immediately pay \$2,000.00 and would have income tax and sales tax rebates available this summer to pay her debt.

7. The Respondent is no longer involved in bookkeeping for the business.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Commissioner of Revenue and the Administrative Law Judge have authority to consider the issues set out in the Notice of and Order for Hearing and to take the action proposed under Minn. Stat. § § 297A.07, subd. 1 and 14.50, and Minn. Rules, pts. 8130.2700, 8130.7300 and 8130.7500.

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.

3. The Respondent has failed to pay sales taxes as required by Minn. Stat. § 289A.20 and Minn. Rules pt. 8130.7500.

4. As a result of the failure to pay sales taxes owed to the Department, including penalties, interest and other charges, reasonable cause exists to revoke the Respondent's sales tax permit under Minn. Stat. § 297A.07 and Minn. Rules pt. 8130.2700.

5. Under Minn. Stat. § 270.67, subd. 2, the commissioner is authorized in his discretion to enter into a written agreement extending the time for payment of tax due and providing for the payment in regular installments. The agreement must contain a confession of judgment. The statute also requires that interest be paid on the principal amount due during the term of the payment agreement.

6. The Memorandum attached hereto is incorporated by reference.

7. Based upon the foregoing Conclusions, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

### RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Revenue revoke sales and use tax permit number 2261047 issued to Sherry Lee Erickson.

Dated this 19th day of July 1999.

S/ George A. Beck  
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GEORGE A. BECK  
Administrative Law Judge

Reported: Taped

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

Minn. Stat. § 297A.07 authorizes the Commissioner of Revenue to revoke a sales tax permit when a taxpayer has failed to pay sales taxes required by law. The Commissioner must also advise the taxpayer of its right to a contested case hearing under Chapter 14. This was done (Ex. 1) and the respondent requested a hearing (Ex.2). Since sales tax is admittedly due and owing in this matter, the Commissioner is authorized to revoke the permit. The Commissioner is not required to enter into a payment agreement. Under Minn. Stat. § 270.67, subd. 2, he may do so. The statute requires a confession of judgment by the taxpayer and requires that interest be paid on the principal amount covered in the agreement.

The Commissioner of Revenue cannot revoke the tax permit until ten days from the date of this Report. It is suggested that the parties continue to discuss an appropriate payment agreement since it appears that the Respondent may be able to provide a substantial down payment and arrange for tax refunds or rebates to be applied to the debt. She testified that she no longer does the books for the business and implied that her bookkeeping was part of the problem in the failure to pay sales tax.

GAB